

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

CHRIS RECTOR and  
MICHELLE RECTOR

PLAINTIFFS

v.

No. 4:20-cv-1025-DPM

CITY OF HEBER SPRINGS

DEFENDANT

ORDER

The Rectors' motion to dismiss their remaining § 1983 claim against Heber Springs without prejudice, and remand their Arkansas Civil Rights Act claim against the city, *Doc. 80*, is granted with conditions. Fed. R. Civ. P. 41(a)(2) & (d). If the Rectors file a new case asserting the dismissed federal claim, then thirty days after Heber Springs provides proof of payment of any expense incurred (including the non-refundable cost deposit to the Arkansas Municipal League) for something that cannot be used in the defense of the re-filed case, the Rectors must reimburse those sunk expenses. The balance of circumstances favors allowing the dismissal of the federal claim. *Tillman v. BNSF Railway Co.*, 33 F.4th 1024, 1027 (8th Cir. 2022). The Court agrees that the product and immunity issues are novel, which counsels against this Court exercising supplemental jurisdiction and keeping the case. 28 U.S.C. § 1367(c); *Streambend Properties II, LLC v. Ivy Tower Minneapolis, LLC*, 781 F.3d 1003, 1016-17 (8th Cir. 2015). And

because a new Final Scheduling Order is needed, it's unclear whether this Court could adjudicate this case any quicker than the state court.

\* \* \*

The Rectors' § 1983 claim against Heber Springs is dismissed without prejudice on the specified condition. The case is remanded to the Circuit Court of Van Buren County, Arkansas. 28 U.S.C. § 1441(c).

So Ordered.

D.P. Marshall Jr.

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United States District Judge

2 May 2023